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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,008	12/16/2003	Lior Porat	5760-14500	4517
35690 7590 02/08/2007 MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. 700 LAVACA, SUITE 800 AUSTIN, TX 78701			EXAMINER LONG, ANDREA NATAE	
			ART UNIT 2176	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/737,008

Applicant(s)

PORAT ET AL.

Examiner

Andrea N. Long

Art Unit

2176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 06/13/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-28 have been examined in response to application filed 12/16/2003.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Independent claim 19 recites "a computer readable medium". In Applicant's specification a computer readable medium may include "transmission media or signals". Signals do not fall within one of the four categories (process, machine, manufacture, or composition of matter) of patent eligible subject matter.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 10, 19, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Planas et al (US Patent 6112015), hereinafter "Planas".**

As to independent claims 1, 10, 19, and 28, Planas teaches monitoring a plurality of application tiers (column 2 lines 52-54), wherein said monitoring includes tracking one or more attributes (states and statuses) associated with each of the application tiers (column 2 lines 63-67);

displaying a plurality of objects each corresponding to a respective one of the application tiers (column 2 lines 26-28, Fig. 4a);

in response to detecting a change in the one or more attributes associated with a given application tier, altering the appearance of the corresponding object to reflect said change (column 8 lines 17-25, Fig. 20 → Planas teaches when the state or status changes for a network object, the attributes (e.g. border, texture, or perimeter) change or modifiers are added).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 2-4, 6, 7, 11-13, 15, 16, 20-22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Planas et al (US Patent 6112015) in view of**

**Enchanted Learning (Graphic Organizers, web page updated 10/03/2003),
hereinafter.**

As to dependent claims 2, 11, and 20, Planas teaches objects (Figs. 2a through 2d) and indicators (Figs. 5 through 19). However, Planas does not teach wherein each of the plurality of objects includes a core object and one or more indicators in proximity to the core object. Enchanted Learning teaches using star graphs to organize data about multiple traits or attributes (indicator) associated with a single topic (core object) (page 6, Fig. 1).

It would have been obvious to one skilled in the art at the time the invention was made to use a star diagram to represent a performance system to give operators the ability to quickly visually interpret the state of the network at any time (column 4 lines 66-67 → Planas) and is a pictorial way of constructing knowledge and organizing information which can convert and compress information into a structured, simple-to-read, graphic display (page 1 → Enchanted Learning).

As to dependent claims 3, 12, and 21, Planas teaches wherein said altering comprises altering the appearance of the one or more indicators (column 12 lines 10-31).

As to dependent claims 4, 13, and 22, Planas teaches wherein said altering further comprises altering the color of the one or more indicators (column 12 lines 10-31).

As to dependent claims 6, 15, and 24, note the discussion above, Planas teaches indicators. However, Planas does not teach wherein the one or more indicators are arranged around the displayed object. Enchanted Learning teaches using star graphs to organize data about multiple traits or attributes (indicator) associated with a single topic (core object) (page 6, Fig. 1).

It would have been obvious to one skilled in the art at the time the invention was made to use a star diagram to represent a performance system to give operators the ability to quickly visually interpret the state of the network at any time (column 4 lines 66-67 → Planas) and is a pictorial way of constructing knowledge and organizing information which can convert and compress information into a structured, simple-to-read, graphic display (page 1 → Enchanted Learning).

As to dependent claims 7, 16, and 25, Planas teaches a plurality of indicators, note the discussion above. However, Planas does not teach wherein each of the plurality of indicators corresponds to a different attribute of the application tier. Enchanted Learning teaches a star diagram that is used to organize data about multiple attributes associated with a single topic.

It would have been obvious to one skilled in the art at the time the invention was made to use a star diagram to represent a performance system to give operators the ability to quickly visually interpret the state of the network at any time (column 4 lines 66-67 → Planas) and is a pictorial way of constructing knowledge and organizing information which can convert and compress information into a structured, simple-to-read, graphic display (page 1 → Enchanted Learning).

6. Claims 9, 18, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Planas et al (US Patent 6112015) in view of McMillian et al (US Patent 5926176), hereinafter "McMillian".

As to dependent claims 9, 18, and 27, note the discussion above, Planas teaches monitoring the performance of an application and objects being connected (column 5 lines 49-65). However, Planas does not teach wherein each of the one or more of objects is connected by a directional arrow, wherein the directional arrow represents the data flow between the pluralities of application tiers. McMillian teaches using a flowchart (Fig. 3, column 1 lines 39-43). It is well known that a flowchart uses direction arrows to show the flow of information.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have used a flowchart to illustrate a performance monitoring system to make it easier for an engineer or programmer to visualize how the application's performance is operating (column 1 lines 39-39).

7. Claims 5, 14, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMillian (US Patent 6112015) as modified by Enchanted Learning (Graphic Organizers, web page updated 10/03/2003) in further view of McMillian et al (US Patent 5926176).

As to dependent claims 5, 14, and 23, Planas as modified by Enchanted Learning teaches an alert (alarm) "Critical", "Major", and "Minor", with each alarm being associated with a color. No alarm would be the normal color of the object (column 12 lines 10-43). However, Planas does not teach coloring the one or more indicators blue for a no-alert status, coloring the indicators yellow for a near- critical alert status, and coloring the indicators red for a critical alert status. McMillian teaches runtime conditions of with the following color scheme of red to indicate blocks executed every time, yellow to indicate blocks executed at least once but not every time, and blue to indicate never executed (column 7 lines 10-15). It is reasonable for the color scheme of McMillian to be equivalent to coloring the one or more indicators blue for a no-alert status (never executed), coloring the indicators yellow for a near- critical alert status (executed as least once but not always executed), and coloring the indicators red for a critical alert status (always executed).

It would have been obvious to one skilled in the art at the time the invention was made to have combined the alarms of Planas as modified by Enchanted Learning with the coloring scheme of McMillian to readily communicate to the human operator which alarm is associated with the object.

8. Claims 8, 17, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMillian (US Patent 6112015) as modified by Enchanted Learning (Graphic Organizers, web page updated 10/03/2003).

As to dependent claims 8, 17, and 26, note the discussion above, Planas as modified by Enchanted Learning teaches monitoring attributes. However, Planas does not teach wherein the monitored attributes include performance trending, current performance, current load, load trending, service, maintenance, and a custom aspect. Official Notice is taken that it is old and well known that the attributes of performance trending, current performance, current load, load trending, service, maintenance, and a custom aspect, which take place in application performance monitoring systems, which is also taught in Applicant's Background of the Invention, page 2 lines 1-8.

It would have been obvious to one skilled in the art at the time the invention was made to have included attributes of performance trending, current performance, current load, load trending, service, maintenance, and a custom aspect, to account for a complete and accurate performance monitoring system.

Conclusion

9. The prior art made of record on Form PTO 892 and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 2176

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea N. Long whose telephone number is 571-270-1055. The examiner can normally be reached on Mon - Thurs 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on 571-272-4136. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andrea Long
02/01/2007

William L. Bashore
WILLIAM BASHORE
PRIMARY EXAMINER